

AGENDA
FREMONT REDEVELOPMENT AGENCY REGULAR MEETING
MARCH 8, 2011
7:00 P.M.

- 1. CALL TO ORDER**
- 2. CONSENT CALENDAR**

Items on the Consent Calendar are considered to be routine by the Redevelopment Agency and will be enacted by one motion and one vote. There will be no separate discussion of these items unless an Agency Member or citizen so requests, in which event the item will be removed from the Consent Calendar and considered in its normal sequence on the agenda. Additionally, other items without a "Request to Address the Redevelopment Agency Board" card in opposition may be added to the consent calendar. (In the report section of the agenda, consent items are indicated by an asterisk.)

2.1 *Approval of Minutes – None.*

- 2.2 **AMENDMENTS TO PROFESSIONAL SERVICE AGREEMENTS WITH ERLER & KALINOWSKI, INC., AND HARRIS & ASSOCIATES, INC., FOR ENVIRONMENTAL REMEDIATION OF THE FORMER UNION PACIFIC PROPERTY AND EXISTING CITY PARKING LOTS IN NILES**

Authorize the City Manager to Execute an Amendment Increasing the Current Service Agreement between the City and Erler & Kalinowski, Inc., by \$210,000, to a Total of \$605,000 and Authorize the Agency Executive Director to Execute an Amendment Increasing the Current Service Agreement between the Redevelopment Agency and Harris & Associates, Inc., by \$69,040, to a Total of \$398,720 for Environmental Remediation Services for the Former Union Pacific Railroad Property and Existing City Parking Lots in Niles

Contact Person:

Name:	Josh Huber	Norm Hughes
Title:	Redevelopment Project Manager	City Engineer
Dept.:	Housing and Redevelopment	Public Works
Phone:	510-494-4513	510-494-4748
E-Mail:	jhuber@fremont.gov	nhughes@fremont.gov

RECOMMENDATIONS: Authorize the Redevelopment Agency Executive Director, or his designee, to execute a Professional Services Agreement Amendment with Harris & Associates, Inc., for Project and Construction Management Services during Phase 2 of the environmental remediation of the former Union Pacific Property in Niles in an amount not to exceed \$69,040.

3. PUBLIC COMMUNICATIONS

3.1 Oral and Written Communications

4. PUBLIC HEARINGS – None.

5. OTHER BUSINESS

5.1 Report Out from Closed Session of Any Final Action

5.2 UPDATE ON REDEVELOPMENT AGENCY ISSUANCE OF TAX ALLOCATION BONDS

Update on Proposed Issuance of 2011 Redevelopment Agency Tax Allocation Bonds

Contact Person:

Name:	Elisa Tierney	Harriet Commons
Title:	Redevelopment Agency Director	Director
Dept.:	Housing and Redevelopment	Finance
Phone:	510-494-4501	510-284-4010
E-Mail:	etierney@fremont.gov	hcommons@fremont.gov

RECOMMENDATION: Provide direction to staff to EITHER:

1. Not proceed with the sale of tax allocation bonds at this time, OR
2. Sell the bonds as currently structured.

5.3 ASSIGNMENT OF REDEVELOPMENT AGENCY SERVICE AGREEMENTS TO THE CITY

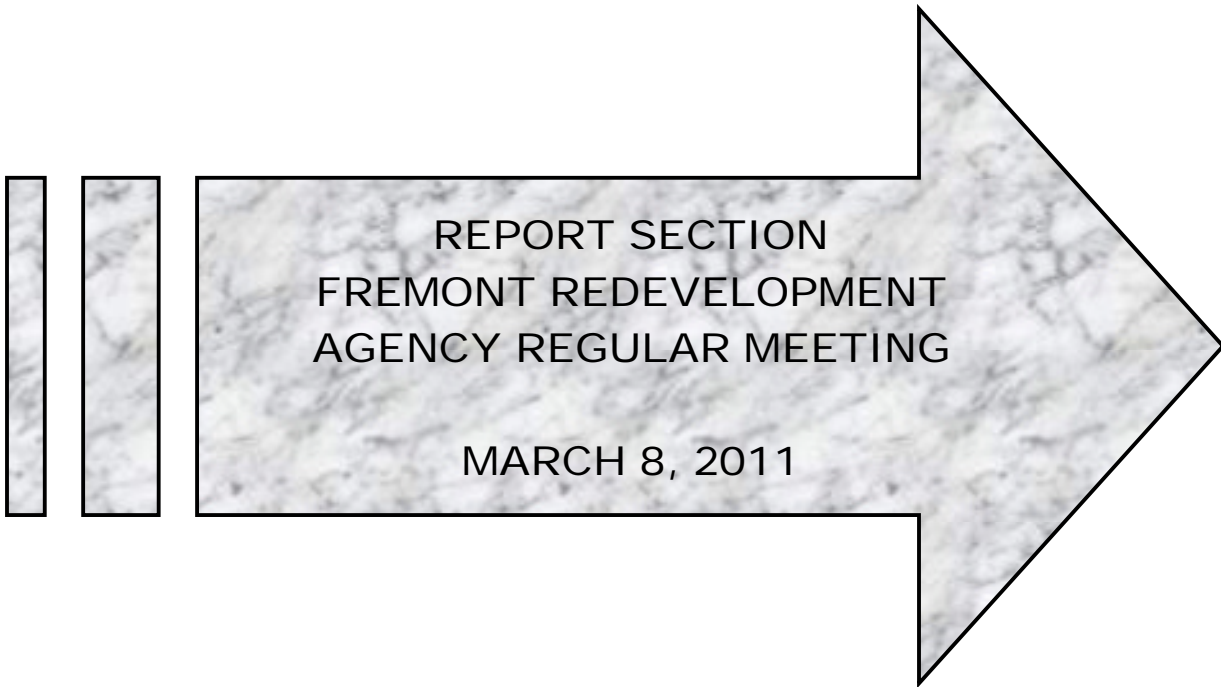
Approve Assignment of Redevelopment Agency Service Agreements to the City and Authorize the Executive Director and City Manager to Execute An Assignment and Assumption Agreement

Contact Person:

Name:	Josh Huber	Elisa Tierney
Title:	Redevelopment Project Manager	Redevelopment Agency Director
Dept.:	Housing and Redevelopment	Housing and Redevelopment
Phone:	510-494-4513	510-494-4501
E-Mail:	jhuber@fremont.gov	etierney@fremont.gov

RECOMMENDATION: Approve the assignment of Redevelopment Agency service agreements to the City as described in the attached list, and authorize the Agency Executive Director and the City Manager to execute an Assignment and Assumption Agreement.

6. ADJOURNMENT



***2.2 AMENDMENTS TO PROFESSIONAL SERVICE AGREEMENTS WITH ERLER & KALINOWSKI, INC., AND HARRIS & ASSOCIATES, INC., FOR ENVIRONMENTAL REMEDIATION OF THE FORMER UNION PACIFIC PROPERTY AND EXISTING CITY PARKING LOTS IN NILES**

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A companion item is on the City Council agenda for this evening.

Executive Summary: Companion items appear on the Agency Board and City Council agendas this evening, requesting amendments to professional services on the Niles UP phase 2 remediation project. In July 2009, the City of Fremont entered into a service agreement with Erler & Kalinowski, Inc. (“EKI”), to develop the Remedial Design and Implementation Plan, assist with remediation contract document and technical specifications preparation, and provide environmental consulting services during Phase 2 remediation activities at the former Union Pacific (“UP”) Railroad Property and existing City parking lots in Niles. The initial EKI Service Agreement amount of \$395,000 is nearing completion, and staff is seeking authorization for the City Manager to increase the contract by \$210,000 to provide continued environmental consulting services during ongoing, active site remediation. If authorized, the new service agreement amount will be \$605,000.

In May 2009, the Fremont Redevelopment Agency entered into a service agreement with Harris & Associates, Inc. (“Harris”), to provide project management and construction management services on behalf of the Agency during remedial design project planning and throughout Phase 2 remediation activities at the former UP Railroad Property and existing City parking lots in Niles. The Agency executed a small amendment that added \$54,316 in October 2010. The initial Harris Agreement amount (\$275,364) and Amendment 1 amount (\$54,316) to the contract are nearing completion, and staff is seeking authorization for the Executive Director to increase the contract by \$69,040 to provide continued environmental project/construction management services during ongoing, active site remediation. If authorized, the new service agreement amount will be \$398,720.

BACKGROUND: The Niles UP site, comprised of the 37482, 37592, and 37682 Niles Boulevard properties, has been controlled by the City’s Redevelopment Agency since January 2000. As part of the settlement agreement with UP, the Agency and City assumed responsibility for environmental remediation of the entire site.

In 2006, the California Department of Toxic Substances Control (DTSC), the State agency overseeing the environmental cleanup of the site, approved the Agency's Remedial Action Plan (RAP), which addresses remediation of the site. The RAP is the blueprint for the overall cleanup of the properties involved. Cleanup of the properties was divided into two phases. The Phase 1 project, completed in 2007, remediated a portion of the property necessary for the construction of the new Niles Town Plaza.

A City Public Works Construction Contract was awarded in June 2010 for remediation of the remainder the site (Phase 2), which includes remediation of the unimproved and vacant portion of the UP property and adjacent City Parking Lots 1 and 2. Active site remediation began in September 2010.

DISCUSSION/ANALYSIS: These service agreement amendments will fund professional services essential to the completion of the Phase 2 environmental remediation work. During implementation of the Phase 2 remediation project, wide-spread site contamination has been observed throughout the unimproved and vacant portion of the former UP property at depths greater than the excavation depths specified in the remediation contract and in areas outside those originally specified for remedial excavation. The scheduled remediation contract completion date has been delayed due to the additional excavation required to be performed in accordance with the DTSC-approved Niles RAP (2006).

The proposed amendments encompass increases in budget resulting from additional excavation of contaminated soil in accordance with the RAP, including added soil sampling costs, perimeter air monitoring costs, DTSC coordination activities, and overall project/ construction management services during remediation implementation.

FISCAL IMPACT: Sufficient funding for this contract amendment exists in 951PWC 8700.

Staff recommends transferring an additional appropriation of \$274,090 to existing account 951 PWC 8700 for funding of these two Professional Service Agreement Amendments.

ENVIRONMENTAL REVIEW: No further environmental study is required. An Initial Study and Negative Declaration were prepared/ adopted for this project in accordance with the requirements of the California Environmental Quality Act (CEQA). The analysis of the project concluded that there would not be a significant impact on the environment. Draft environmental documents were circulated for public review and comment from April 14, 2010 through May 5, 2010. No potentially significant impacts were identified during the public review period.

ENCLOSURE: None

RECOMMENDATIONS: Authorize the Redevelopment Agency Executive Director, or his designee, to execute a Professional Services Agreement Amendment with Harris & Associates, Inc., for Project and Construction Management Services during Phase 2 of the environmental remediation of the former Union Pacific Property in Niles in an amount not to exceed \$69,040.

5.1 Report Out from Closed Session of Any Final Action

5.2 UPDATE ON REDEVELOPMENT AGENCY ISSUANCE OF TAX ALLOCATION BONDS

Update on Proposed Issuance of 2011 Redevelopment Agency Tax Allocation Bonds

Contact Person:

Name:	Elisa Tierney	Harriet Commons
Title:	Redevelopment Agency Director	Director
Dept.:	Housing and Redevelopment	Finance
Phone:	510-494-4501	510-284-4010
E-Mail:	etierney@fremont.gov	hcommons@fremont.gov

A companion report is on tonight's agendas for the City Council and the Fremont Public Financing Authority.

Executive Summary: On January 17, 2011, the City Council and the Redevelopment Agency Board approved the issuance of up to \$140 million of tax allocation bonds by the Redevelopment Agency for the construction of infrastructure projects, the most significant one being the Irvington BART station. The bonds were scheduled to price on February 24, but that did not occur because of uncertainty created by the posting of proposed legislation to "disestablish" redevelopment agencies on the State Department of Finance's website late in the day on February 23. Staff is providing an update on the current status of this transaction, and requesting feedback and direction from Council, the Agency Board, and the Public Financing Authority Board about how to proceed.

BACKGROUND: On January 10, 2011, the Governor released his 2011/12 budget proposal. A major provision of the Governor's budget proposal that affects local government is the proposed elimination ("disestablishment") of redevelopment agencies throughout the State by July 1, 2011. In order to accomplish such rapid termination of redevelopment as part of the overall budget package, the proposal contemplates urgency legislation in March 2011, which needs a 2/3 vote in both houses to become effective immediately and suspend Agency operations. The elimination of redevelopment agencies as of July 1, 2011 would mean the following:

- Full Agency closure by July, 1, 2011. There would be no new allocation of tax increment revenues in future years, with the exception of sufficient future property taxes needed to meet future scheduled payments of each agency's existing obligations and debt service. A local "successor agency" would be established, whose purpose would be solely to receive sufficient future property taxes to make payments to retire the agency's existing debts and obligations.
- No new obligations/commitments of tax increment by agencies effective upon enactment of urgency legislation, anticipated in March; and
- Unspent and unencumbered Housing Fund balances would be transferred to the local housing authority (in the case of Fremont, likely the Housing Authority of the County of Alameda), with no future funding for affordable housing proposed.

In order to effectuate his proposal, the Governor anticipates the passage of comprehensive urgency legislation in March, which would, in effect, freeze the ability of agencies to take on new obligations and debt service. Proposed legislation was posted on the State Department of Finance's website late in the day on February 23, 2011. This proposed legislation has not yet been introduced, nor has an author been identified. Nevertheless, it has had a significant impact on issuance of redevelopment tax allocation bonds.

DISCUSSION/ANALYSIS: The proposed legislation provides 27 pages of detail about the Governor's proposal to "disestablish" redevelopment agencies. The Joint Budget Conference Committee of the Legislature convened late in February (after the posting of this proposed legislation), with a goal of having its work on the Governor's budget proposal completed by March 10, 2011. To date, there have been no new developments on the redevelopment front, although staff will be prepared to provide a verbal update should something occur between the time of preparation of this staff report and the Council meeting.

Although bond counsel has concluded that tax-exempt bonds could be issued prior to the effective date of this proposed legislation, it is not clear that bond proceeds could ultimately be spent on the infrastructure improvements included in the Agency's work plan and approved by the Council and Agency Board. Following are the key components of the proposed legislation:

- Upon adoption of the legislation, agencies would be prohibited from entering new, or amending existing, contracts and, as of July 1, all new redevelopment activities would cease.
- Non-housing RDA assets would be assigned to a successor entity to wind up the Agency's affairs (the successor entity can be the City).
- Activities of the successor entity would be subject to review by an oversight board, which would consist of representatives of the affected taxing entities (the County, the City, schools, special districts).
- Payments made by the successor entity would require approval by the oversight board.
- The oversight board may challenge activities retroactively to January 1, 2011, including bond sales and developer agreements (DDAs, leases, etc.), for up to 3 years.

There is an alternative "big 8 mayors" compromise proposal that has been suggested. Under that proposal, redevelopment agencies would remain in existence. However, the agencies would give up 5% of tax increment to the State in exchange for 10 years of additional life. Whether this proposal will be considered by the Joint Conference Committee is unknown at this time.

There are two alternatives staff has identified for Council consideration. One is to not proceed with the issuance of these tax allocation bonds, the other is to proceed. The pros and cons of each option are discussed below.

Option 1 – Do not proceed with the sale of tax allocation bonds at this time. Instead, wait for the State to enact budget legislation and remove the uncertainty that currently exists around this transaction. The advantages of this option are as follows:

- If redevelopment is "saved", the bond sale would likely be able to proceed with more favorable interest rates. This would result in more tax increment available for projects.

- Deferring bond issuance also provides more flexibility to react to any compromise legislation that might require sharing a portion of tax increment.

A disadvantage of waiting is that, if legislation is enacted consistent with the Governor's proposal, there will be no money available for projects, including the Irvington BART station.

Option 2 – Sell the bonds as currently structured. In order to mitigate the risk that bond proceeds might not be able to be spent on projects, the City and Agency would need to have enforceable contracts in place with third parties (such as BART). An even stronger mitigation would be to have completed a substantial portion of the project by the effective date of the legislation, although that is likely not possible. An advantage of this option is that \$124 million of infrastructure projects would be funded if the legislation does not pass, or it passes and is subsequently invalidated.

The disadvantages of this option are as follows:

- The uncertainty created by the Governor's budget proposal has resulted in higher interest rates in the tax-exempt debt market.
- There would be less flexibility to react to any compromise legislation that might be enacted.
- Although tax increment would be committed to pay debt service on the bonds, it might not be possible to actually build the projects.

FISCAL IMPACT: The Redevelopment Agency currently receives approximately \$34.5 million in tax increment revenue annually. If no new Agency indebtedness is issued and this revenue instead were to be distributed to the City and other taxing entities under an enacted form of the Governor's budget proposal, the City's share would be approximately \$5.2 million. This assumes the Agency has no other existing outstanding debt and the current Agency/City Master Public Improvements Agreement is not followed in the future. This General Fund revenue would be unrestricted and the City would be free to spend the revenue however it chooses.

If the Agency were to issue bonds that are recognized as a pre-existing debt under an enacted version of the Governor's budget proposal, the pool of available property tax revenue would be reduced by an amount that the successor entity would first draw down to pay the annual bond debt service, with a resulting impact on the City's General Fund. With annual debt service of \$10.3 million, the net property tax revenue to be distributed among local governments after payment of the proposed bond debt service would be \$34.5 million minus \$10.3 million, or \$24.2 million. While this would mean a decrease of \$1.5 million in net tax revenue to the City's General Fund (\$3.7 million instead of \$5.2 million), \$124 million in additional City capital projects, most notably the Irvington BART station, would be secured.

However, if it is determined that bond proceeds cannot be spent for the identified projects identified, the result would be that tax increment will have been committed for debt service for 10 years (the earliest date at which the bonds could be called and paid off) and all taxing entities, including the City, will have been deprived of property taxes, with no infrastructure projects to show for it.

ENVIRONMENTAL REVIEW: None required.

ENCLOSURE: None

RECOMMENDATION: Provide direction to staff to EITHER:

1. Not proceed with the sale of tax allocation bonds at this time, OR
2. Sell the bonds as currently structured.

5.3 ASSIGNMENT OF REDEVELOPMENT AGENCY SERVICE AGREEMENTS TO THE CITY

Approve Assignment of Redevelopment Agency Service Agreements to the City and Authorize the Executive Director and City Manager to Execute An Assignment and Assumption Agreement

Contact Person:

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Phone:	510-494-4513	510-494-4501
E-Mail:	jhuber@fremont.gov	etierney@fremont.gov

***A Companion item appears on the City Council agenda**

Executive Summary: The budget bill language proposed by Governor Brown contemplates terminating the ability of local redevelopment agencies to enter into or amend contracts and service agreements upon the Governor's signing of the legislation. Staff therefore recommends that all service agreements for projects currently underway to which the Redevelopment Agency is party be assigned to the City.

BACKGROUND: In early January, the Governor released his 2011/12 budget proposal which, among other provisions, calls for the elimination of redevelopment agencies throughout the State by July 1, 2011. In order to accomplish such rapid termination of redevelopment, the proposal contemplates urgency legislation in March 2011, which needs a 2/3 vote in both houses to become effective immediately and suspend Agency operations. On March 1, 2011, the City Council and Agency Board approved Amendment No. 11 to the Public Improvements Grant Agreement between the Redevelopment Agency and the City of Fremont, which authorized the reallocation of certain funds held by the Agency to the City's control to fund the public improvements.

DISCUSSION/ANALYSIS: In order to allow for the continuation and completion of Agency sponsored projects currently under way and expenditure of the funds dedicated for those improvements, it may be necessary under certain circumstances to amend service contracts previously entered into by the Agency. If the bill language proposed by the Governor were to become law, it would immediately terminate the Agency's ability to enter into, or modify, existing contracts. The action recommended in this staff report would mitigate this potential problem by authorizing the City to amend such contracts under its own authority.

FISCAL IMPACT: There is no fiscal impact to this action. Funding resources for all affected contracts have been transferred to control of the City.

ENVIRONMENTAL REVIEW: None required.

ENCLOSURE: [List of service contracts recommended for transfer to the City](#)

RECOMMENDATION: Approve the assignment of Redevelopment Agency service agreements to the City as described in the attached list, and authorize the Agency Executive Director and the City Manager to execute an Assignment and Assumption Agreement.